TITLE 328 UNDERGROUND STORAGE TANK FINANCIAL ASSURANCE BOARD

ARTICLE 1. EXCESS LIABILITY TRUST FUND CORRECTIVE ACTION AND ELTF LIABILITY INDEMNITY CLAIM PAYMENTS

Rule 1. Definitions and References

328 IAC 1-1-1 Application of definitions

Authority: IC 13-23-11-7
Affected: IC 13-11-2; IC 13-23

Sec. 1. In addition to the definitions in IC 13-11-2, the definitions in this rule apply throughout this article. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 787; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA; readopted filed Jul 29, 2013, 9:18 a.m.: 20130828-IR-328130177BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-1-2 "Administrator" defined

Authority: IC 13-23-11-7
Affected: IC 13-23

Sec. 2. "Administrator" refers to the commissioner of the department of environmental management. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 787; filed Aug 30, 2004, 9:40 a.m.: 28 IR 123; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA; readopted filed Jul 29, 2013, 9:18 a.m.: 20130828-IR-328130177BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-1-2.2 "Closure" or "closed" defined (Repealed)

Sec. 2.2. *(Repealed by Underground Storage Tank Financial Assurance Board; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-1-3 "Corrective action" defined

Authority: IC 13-23-11-7
Affected: IC 13-23

Sec. 3. "Corrective action" has the meaning set forth at 329 IAC 9-1-14.5. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 787; filed Aug 30, 2004, 9:40 a.m.: 28 IR 123; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA; readopted filed Jul 29, 2013, 9:18 a.m.: 20130828-IR-328130177BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-1-3.1 "Corrective action plan" or "CAP" defined

Authority: IC 13-23-11-7
Affected: IC 13-23-7; IC 13-23-9-2.2

Sec. 3.1. "Corrective action plan" or "CAP" has the meaning set forth at 329 IAC 9-1-14.7. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-3.1; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA; readopted filed Jul 29, 2013, 9:18 a.m.: 20130828-IR-328130177BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-1-4 "Deductible amount" defined

Authority: IC 13-23-11-7
Affected: IC 13-23-9-1.3

Sec. 4. "Deductible amount" means the amount specified in IC 13-23-9-1.3 applicable to each incident number assigned by the department. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-4; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788; filed Aug 30, 2004, 9:40 a.m.: 28 IR 124; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA; readopted filed Jun 29, 2017, 9:30 a.m.: 20170726-IR-328170227BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-1-5 "Department" defined (Repealed)

Sec. 5. *(Repealed by Underground Storage Tank Financial Assurance Board; filed Oct 17, 2001, 4:30 p.m.: 25 IR 803)*

328 IAC 1-1-5.1 "Emergency measures" defined

Authority: IC 13-23-11-7
Affected: IC 13-12-3-2; IC 13-23-9-1.5

Sec. 5.1. "Emergency measures" means any work described under IC 13-23-9-1.5(a)(2)(C). The term only includes the necessary work performed to directly abate the following conditions related to a release:

(1) Petroleum or petroleum constituents are detected in indoor air in a building at concentrations exceeding the appropriate screening levels as specified by the department in accordance with the remediation standards determined under IC 13-12-3-2 for the contaminants of concern.

(2) Petroleum or petroleum constituents, greater than ten percent (10%) of the measured lower explosive limits, are detected anywhere in utility conduits, such as sewers.

(3) Petroleum or petroleum constituents are detected as free product or sheen in utility conduits or surface water.

(4) Petroleum or petroleum constituents are detected as free product off-site, not including easements or rights-of-way.

(5) Petroleum or petroleum constituents are detected at or above the appropriate screening levels for ground water as specified by the department in accordance with the remediation standards determined under IC 13-12-3-2(a):

(A) in a drinking water well, as measured at the point of compliance or at the tap; or

(B) within one (1) year time of travel from a public drinking water well, and the petroleum or petroleum constituents are in imminent danger of impacting drinking water.

(6) Any other condition requiring direct abatement, as specified by the commissioner, based on the potential threat to human health or the environment.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-5.1; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788; filed Aug 30, 2004, 9:40 a.m.: 28 IR 124; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA; readopted filed Jul 29, 2013, 9:18 a.m.: 20130828-IR-328130177BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)

328 IAC 1-1-6 "Fund" defined (Repealed)

Sec. 6. *(Repealed by Underground Storage Tank Financial Assurance Board; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-1-6.5 "Fund qualifying occurrence" defined (Repealed)

Sec. 6.5. *(Repealed by Underground Storage Tank Financial Assurance Board; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-1-7 "Occurrence" defined

Authority: IC 13-23
Affected: IC 13-23

Sec. 7. "Occurrence" means an incident that results in a release of petroleum, including a continuous or repeated release of petroleum, from an UST system. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-7; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1051; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA; readopted filed Jun 29, 2017, 9:30 a.m.: 20170726-IR-328170227BFA)*

328 IAC 1-1-7.5 "Off-site" defined

Authority: IC 13-23
Affected: IC 13-23

Sec. 7.5. "Off-site" means property other than the following:

(1) The parcel of real estate that contains the underground storage tank that is the source of the release.

(2) Other parcels owned by a person described in 328 IAC 1-3-1(a).

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-7.5; filed Aug 30, 2004, 9:40 a.m.: 28 IR 124; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA; readopted filed Jun 29, 2017, 9:30 a.m.: 20170726-IR-328170227BFA)

328 IAC 1-1-8 "Reasonable costs" defined (Repealed)

Sec. 8. *(Repealed by Underground Storage Tank Financial Assurance Board; filed Aug 30, 2004, 9:40 a.m.: 28 IR 144)*

328 IAC 1-1-8.3 "Reasonable" defined

Authority: IC 13-23-11-7
Affected: IC 13-23; IC 13-23-9-1.5

Sec. 8.3. "Reasonable" means that the site characterization and corrective action are:

(1) appropriate and performed only as necessary to meet the cleanup objectives for the site; and

(2) consistent with the requirements of:

(A) 329 IAC 9;

(B) 328 IAC 1-3-5(b) through 328 IAC 1-3-5(e); and

(C) other applicable state and federal laws and regulations.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-8.3; filed Aug 30, 2004, 9:40 a.m.: 28 IR 124; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA; readopted filed Jul 29, 2013, 9:18 a.m.: 20130828-IR-328130177BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)

328 IAC 1-1-8.5 "Site characterization" defined

Authority: IC 13-23-11-7
Affected: IC 13-23

Sec. 8.5. "Site characterization" means the work performed under the initial site characterization (ISC) described at 329 IAC 9-5-5.1 or further site investigations described in 329 IAC 9-5-6 and may include, as necessary, quarterly monitoring and pilot studies to determine the feasibility of remediation alternatives. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-8.5; filed Oct 17, 2001, 4:30 p.m.: 25 IR 788; filed Aug 30, 2004, 9:40 a.m.: 28 IR 125; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA; readopted filed Jul 29, 2013, 9:18 a.m.: 20130828-IR-328130177BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-1-9 "Substantial compliance" defined (Repealed)

Sec. 9. *(Repealed by Underground Storage Tank Financial Assurance Board; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-1-10 "Third party liability" defined (Repealed)

Sec. 10. *(Repealed by Underground Storage Tank Financial Assurance Board; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-1-11 Incorporation by reference (Repealed)

Sec. 11. *(Repealed by Underground Storage Tank Financial Assurance Board; filed Oct 17, 2001, 4:30 p.m.: 25 IR 803)*

328 IAC 1-1-12 "UST system" or "tank system" defined

Authority: IC 13-23-11-7
Affected: IC 13-23

Sec. 12. "UST system" or "tank system" has the meaning set forth at 40 CFR 280.12. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-1-12; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA; readopted filed Jun 29, 2017, 9:30 a.m.: 20170726-IR-328170227BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA; errata filed Jul 31, 2018, 9:26 a.m.: 20180822-IR-328150231ACA)*

Rule 2. Scope and Fund Management

328 IAC 1-2-1 Applicability

Authority: IC 13-23-11-7
Affected: IC 13-23

Sec. 1. Persons listed in 328 IAC 1-3-1 may apply to the fund for payment of reimbursable costs and ELTF indemnity claims, in accordance with the following:

(1) Eligibility requirements, deductible amounts, maximum reimbursement per eligible release, and maximum reimbursement per eligible party are determined by the requirements and limits in effect on:

(A) the date the release occurs; or

(B) if the date that the release occurs cannot be determined, the date the release was discovered.

(2) The applicable cost range or amount of the reimbursable cost, as set forth in 328 IAC 1-3-5, is determined under the section in effect on the date of the invoice for the work and the costs incurred. If the work is performed by the owner, operator, or applicant, the applicable cost range or amount of the reimbursable cost is determined by the date the work was completed.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-2-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 789; filed Aug 30, 2004, 9:40 a.m.: 28 IR 125; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA; readopted filed Jul 29, 2013, 9:18 a.m.: 20130828-IR-328130177BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)

328 IAC 1-2-2 Fund management

Authority: IC 13-23-11-7
Affected: IC 13-23

Sec. 2. The administrator of the fund shall prepare an annual report to the financial assurance board by September 1 of each

year. The report must include the following:

(1) A financial statement detailing information for the management and oversight of the fund, including:

(A) facts concerning the amount of money currently in the fund;

(B) the amount of money obligated for corrective actions and ELTF indemnity claims; and

(C) estimates of future revenue for and demands on the fund.

(2) An overview of the fund claims process.

(3) A report of the number of claims made against the fund that were approved and denied during the reporting year.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-2-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 789; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA; readopted filed Jul 29, 2013, 9:18 a.m.: 20130828-IR-328130177BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)

328 IAC 1-2-3 Obligation of monies

Authority: IC 13-23-11-7
Affected: IC 13-23

Sec. 3. (a) Claims shall be paid in the order received by the administrator unless the procedure set forth in 328 IAC 1-4 is applicable.

(b) At the beginning of each state fiscal year, the administrator shall obligate sufficient monies for administering the fund. This amount shall be approved by the financial assurance board. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-2-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1052; filed May 25, 1999, 4:31 p.m.: 22 IR 3103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 789; filed Aug 30, 2004, 9:40 a.m.: 28 IR 125; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA; readopted filed Jul 29, 2013, 9:18 a.m.: 20130828-IR-328130177BFA)*

Rule 3. Fund Coverage and Eligibility

328 IAC 1-3-1 Fund access

Authority: IC 13-23
Affected: IC 13-23-7; IC 13-23-8-4; IC 13-23-9-1.3

Sec. 1. (a) Fund access is limited to eligible parties and those assigned the right of fund access by an eligible party.

(b) Any or all persons listed under subsection (a) may apply to the fund for payment of reimbursable costs or ELTF indemnity claims if:

(1) the release is an eligible release;

(2) the applicant provides documentation of reimbursable costs incurred equal to:

(A) the appropriate deductible amount in accordance with IC 13-23-9-1.3(a); and

(B) any additional amount calculated in accordance with IC 13-23-9-1.3(b); and

(3) a claim for the same costs:

(A) has not been submitted to or paid by the fund; and

(B) will not be paid more than once by the fund.

(c) The administrator may not reimburse costs related to duplicative acts performed by multiple eligible parties. If more than one (1) eligible party submits a claim for reimbursement of costs, the administrator shall determine the appropriate reimbursement based on the:

(1) applicable remediation objectives; and

(2) reasonableness and cost effectiveness of the claims.

(d) The department may:

(1) determine the identity of the tank owner or operator based on the notification submitted under 329 IAC 9-2-2; and

(2) require an affirmation that an applicant is an eligible party or assignee thereof.

(e) Only an owner, operator, or authorized agent may request the status of their tank fee payments and resulting potential

percentage of fund eligibility, if applicable. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1053; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 790; filed Aug 30, 2004, 9:40 a.m.: 28 IR 126; readopted filed Nov 19, 2010, 9:08 a.m.: 20101215-IR- 328100553BFA; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA; readopted filed Jun 29, 2017, 9:30 a.m.: 20170726-IR-328170227BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-3-1.2 Electronic submittal of claim

Authority: IC 13-23
Affected: IC 13-23

Sec. 1.2. Electronic submission of information that is required by this article may be requested by the commissioner. The format and submittal mechanism will be prescribed by the commissioner. Any information submitted on electronic media must also be submitted as a paper copy or copies, unless the commissioner makes a determination that only an electronic copy is needed. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-1.2; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA; readopted filed Jun 29, 2017, 9:30 a.m.: 20170726-IR-328170227BFA)*

328 IAC 1-3-1.3 Cost effectiveness of corrective action

Authority: IC 13-23-11-7
Affected: IC 13-23-7; IC 13-23-9-1.5

Sec. 1.3. (a) The administrator shall determine if the work to be performed or the work already performed, or a portion thereof, under the approved CAP is cost effective after the person described in section 1 of this rule has done the following:

(1) Completed the site characterization for the release at the site.

(2) Submitted the information in clauses (A) through (C) to the administrator in a form or format approved by the administrator as follows:

(A) For each of the remediation alternatives as required by 329 IAC 9-5-6, details of the work to be performed and the projected costs.

(B) The CAP approval letter from the department.

(C) If appropriate, a demonstration that the selected remediation alternative will substantially reduce or eliminate ELTF indemnity claims.

The administrator may review information concerning cost effectiveness while reviewing a CAP submitted for approval; however, the administrator shall not make a determination on cost effectiveness before a CAP is approved.

(b) The administrator shall determine cost effectiveness based on the information in subsection (a) and the following criteria:

(1) The projected costs of the selected remediation alternative compared to the other remediation alternatives.

(2) The likelihood that the remediation approach will achieve the cleanup objectives as set forth in the approved CAP.

(3) The appropriateness of the length of time projected to achieve the cleanup objectives, based on the selected remediation alternative considering actual impacts to human health and the environment.

(4) The cost projections under subsection (a)(2)(A) for the remediation alternatives and the work to be performed do not exceed the reimbursable costs allowed under section 5(a), 5(b), and 5(e) of this rule.

(5) The remediation objectives as set forth in the approved CAP are sufficient, but no more stringent than necessary, for the current land use for the site.

(6) A demonstration that the selected remediation alternative will substantially reduce or eliminate ELTF indemnity claims.

(c) The applicant shall provide additional information to substantiate the projected work and projected costs upon request by the administrator.

(d) At any time, if the administrator finds that the approved CAP will not achieve or is not achieving the cleanup objectives, the administrator may determine that the work to be performed under the approved CAP is no longer cost effective. The administrator shall give notice to the applicant of this determination. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-1.3; filed Aug 30, 2004, 9:40 a.m.: 28 IR 126; readopted filed Nov 19, 2010, 9:08 a.m.: 20101215-IR-328100553BFA; readopted filed Jun 6, 2016, 11:51 a.m.: 20160706-IR-328160142BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-*

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328 IAC 1-3-1.6 Preapproval of work

Authority: IC 13-23-11-7
Affected: IC 13-23-7; IC 13-23-9-2.2

Sec. 1.6. (a) Persons described in section 1 of this rule may submit to the administrator a request for a preapproval of projected work to be performed for site characterization in accordance with 328 IAC 1-1-8.5 and under the approved CAP. The request and any additional information requested by the administrator must be in a form or format approved by the administrator. The administrator shall base preapproval of a request on a determination of the following:

(1) Cost effectiveness under section 1.3 of this rule.

(2) That the costs are reasonable.

(b) The administrator may ask for additional information to substantiate the projected work and projected costs.

(c) The administrator shall issue a preapproval letter stating how much of the work is preapproved as reasonable and cost effective. This preapproval is not a determination on eligibility under section 3 of this rule. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-1.6; filed Aug 30, 2004, 9:40 a.m.: 28 IR 127; readopted filed Nov 19, 2010, 9:08 a.m.: 20101215-IR-328100553BFA; readopted filed Jun 6, 2016, 11:51 a.m.: 20160706-IR-328160142BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-3-2 Fund disbursement (Repealed)

Sec. 2. *(Repealed by Underground Storage Tank Financial Assurance Board; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-3-3 Requirements for reimbursements

Authority: IC 13-23-11-7
Affected: IC 13-23-9-1.3; IC 13-23-12

Sec. 3. (a) A person listed in section 1 of this rule shall comply with the following requirements for a claim for reimbursable costs or an ELTF indemnity claim to be considered for reimbursement from the fund by the administrator:

(1) Demonstrate that the release is an eligible release.

(2) For eligible releases that occur on or after July 1, 2016, or, if the date of occurrence cannot be determined, that are discovered on or after July 1, 2016, an eligible party shall submit all:

(A) claims for payment of reimbursable costs related to the ISC conducted under 329 IAC 9-5-5.1 within three hundred sixty-five (365) days after submittal of all reports required under 329 IAC 9;

(B) remaining claims for payment of reimbursable costs within three hundred sixty-five (365) days after the date those costs were incurred; and

(C) resubmittals associated with any disallowed cost within three hundred sixty-five (365) days after the denial of the claim.

(3) The CAP must be submitted with projected costs that describe in detail the costs for work to be completed under the CAP. The projected costs must be in a form or format approved by the administrator.

(4) For eligible releases that occurred before July 1, 2016, or, if the date of occurrence cannot be determined, that were discovered before July 1, 2016, an eligible party shall submit all:

(A) claims for payment of reimbursable costs within three hundred sixty-five (365) days after the eligible release is granted a status of no further action by the administrator; and

(B) resubmittals associated with any disallowed cost within three hundred sixty-five (365) days after the denial of the claim.

(b) A reduction in reimbursement due to unpaid fees under IC 13-23-9-1.3 does not exempt a UST owner from the requirement to pay any unpaid past due fee. The reduction does not render any fee as paid for the purposes of IC 13-23-12.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1053; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1104; errata, 20 IR 1593; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 790; errata filed Feb 27, 2002, 9:58 a.m.: 25 IR 2254; filed Aug 30, 2004, 9:40 a.m.: 28 IR 127; errata filed Oct 7, 2004, 11:45 a.m.: 28 IR 608; readopted filed Nov 19, 2010, 9:08 a.m.: 20101215-IR-328100553BFA; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA; readopted filed Jun 29, 2017, 9:30 a.m.: 20170726-IR-328170227BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)

328 IAC 1-3-4 Amount of coverage (Repealed)

Sec. 4. *(Repealed by Underground Storage Tank Financial Assurance Board; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-3-5 Costs

Authority: IC 13-23
Affected: IC 13-12-3-2; IC 13-23-3-2; IC 13-23-8-4; IC 13-23-9-1.5

Sec. 5. (a) The administrator may pay ELTF claims for costs described under IC 13-23-9-1.5.

(b) Eligible parties may seek payment from the fund for the following:

(1) Site characterization costs, which include:

(A) research;

(B) field time;

(C) report writing; and

(D) clerical support.

(2) Lodging and per diem costs in accordance with the most current Indiana department of administration financial management circular covering state travel policies and procedures. Mileage must be calculated at the federal rate for a privately owned automobile under 41 CFR 301-10.303, in effect on January 1 of each year.

(3) Soil, water, and vapor sampling for petroleum and petroleum constituents only as necessary to achieve the applicable remediation objectives determined under IC 13-12-3-2.

(4) Costs for machinery and equipment if prorated based on the:

(A) normal expected life of the item; and

(B) length of time the item was used for a single corrective action.

In no event will the fund pay for purchases of machinery and equipment in excess of the market cost of leasing the item for a corrective action. Examples of equipment charges that can be made to the fund are disposable bailers and sample bottles.

(5) Costs for materials and supplies, such as the following:

(A) Disposable protective equipment.

(B) Building materials, such as the following:

(i) Piping.

(ii) Cement.

(C) Preservatives.

(6) Governmental administrative fees for local, state, or federal permits necessary for one (1) or both of the following:

(A) Corrective action.

(B) Site characterization activities.

(7) Provision of alternate water supply. This cost must have been previously approved by the administrator.

(8) Any other reimbursable costs the administrator finds to be necessary.

(9) Costs associated with transitioning management of a site from previous remediation standards to current remediation standards as determined by the department, if these costs would be less than the costs to complete the remediation under the previous remediation standards.

(10) Only one (1) markup may be taken on any item. A markup of not more than ten percent (10%) of the unit rate or the lowest bid may be reimbursed except for the following:

(A) Travel costs, including mileage, per diem, and lodging.

(B) Personnel costs, not including labor rates for subcontractors.

(C) Utilities for temporary facilities.

(D) Governmental administrative fees for local, state, or federal permits.

(E) Equipment and supplies:

(i) not purchased or rented specifically for use at a facility; or

(ii) that are not part of the approved remedial technology.

(11) The fair market value of the cost to obtain access to off-site property if necessary for site characterization or corrective action as reviewed and approved by the office of the attorney general.

(12) Costs for emergency measures determined to be appropriate by the administrator, including the following:

(A) Evacuation and relocation of a building resident or residents.

(B) Ventilation of a building or utility conduit.

(C) Installation and maintenance of an alternate water or treatment system for contaminated drinking water.

(D) Recovery of free product as necessary to eliminate a release to a utility conduit.

(E) Installation of a system to mitigate free product migration, actual or potential drinking water impacts, or vapor intrusion into a building or a utility conduit.

(F) Other emergency measures required by the department.

(13) Compensation paid to technicians for services performed in preparation and submittal of the ELTF claim.

(c) The approval of the site characterization and the CAP is not a determination that the actual costs incurred under the site characterization or the CAP are reimbursable costs under this rule.

(d) The following costs are not reimbursable from the fund:

(1) Costs from releases that occurred before April 1, 1988.

(2) Costs incurred more than twenty-four (24) hours prior to the date and time the release had been reported under the spill reporting rule in effect at the time of the release.

(3) Costs of:

(A) the maintenance of;

(B) the repair of;

(C) upgrading;

(D) removing, unless tank removal is approved as part of the CAP; or

(E) the replacement of;

an underground petroleum storage tank or its associated equipment.

(4) Costs of environmental investigation and remediation not directly related to an eligible release. Ineligible costs include the cost of testing for nonpetroleum contamination and the cost of vapor or ground water monitoring devices that are not associated with corrective action.

(5) Costs that exceed reimbursable costs even if incurred pursuant to an approved CAP.

(6) The cost of equipment purchases other than those costs routinely required to implement a CAP. Examples of nonreimbursable purchases include the following:

(A) Drilling rigs.

(B) Earth moving equipment.

(C) Photoionization detectors.

(D) Explosimeters.

(E) Hand tools.

(7) The cost of cosmetic improvements, including the repair or replacement of blacktop or concrete, unless directly associated with corrective action or emergency response activities.

(8) Lost income or reduced property values unless part of an ELTF indemnity claim.

(9) Interest or finance charges.

(10) Contractor or subcontractor costs not directly related to corrective action activities, such as the following:

(A) Preparing cost estimates.

(B) Reviewing environmental work or documents.

(C) Budgeting.

(D) Changing contractors.

However, eligible parties may seek reimbursement for these costs if the costs meet the requirements in subsection (b)(13).

(11) Fines or penalties imposed by local, state, or federal government agencies.

(12) Punitive or exemplary damages.

(13) Any costs for remediation of contamination not shown to accomplish the applicable remediation objectives determined under IC 13-12-3-2, except for ground water contamination affecting a public or private drinking water well.

(14) Any costs related to the excavation and disposal of more than one thousand five hundred (1,500) tons of soil unless:

(A) alternative remediation techniques have been considered;

(B) excavation and disposal was shown to be the most cost-effective remediation option; and

(C) the soil removal is part of a CAP approved by the administrator.

(15) Any other cost not directly related to site characterization, corrective action, or ELTF indemnity claims or otherwise determined not to be reimbursable under this rule as a result of a financial or technical review.

(16) Remediation costs arising from the acts or omissions on the part of a contractor, owner, or operator that result in:

(A) damage to:

(i) a UST system; or

(ii) dispensing components; or

(B) exacerbation of an existing release.

(17) Any costs to purchase equipment, which was previously purchased and the cost was previously reimbursed from the fund.

(18) Any costs incurred after receipt of notice by the administrator under section 1.3(d) of this rule that the approved CAP is not successfully remediating the site, except the following necessary costs, until the modified CAP is approved:

(A) Development of the modified CAP, including pilot studies or additional investigation.

(B) Demobilization of the corrective action system currently at the site.

(C) Abandonment of monitoring, extraction, or other wells associated with the CAP.

(D) Maintained compliance with applicable regulations and permits, including quarterly ground water monitoring.

(E) Maintenance, but not operation, of the corrective action system.

(19) Credits, rebates, refunds, or other similar payments made to the owner or operator or received by the owner, operator, or applicant.

(e) Costs that may be paid from the fund are as follows:

Activity	Cost Range or Maximum Amount
SITE CHARACTERIZATION	
Direct push technology (other costs pertaining to direct push technology are included in the per foot allowance specified).	$600 per day
In addition to the day rate, costs for boring advancement may be invoiced at the following per foot rates:	$6 per foot
Mobilization and demobilization. This includes the cost of moving general contractor owned equipment, setup, and removing equipment.	$400
Soil borings, for purposes of soil or ground water sampling or monitoring well installation when using a hollow stem auger.	
Number of feet in incremental amounts	
4.25 inch inside diameter	
For the first 15 feet	$24 per foot
16 through 25 feet	$30 per foot
26 feet or more	$35 per foot
6.25 inch inside diameter	
For the first 15 feet	$27 per foot

16 through 25 feet	$33 per foot
26 feet or more	$38 per foot
8.25 inch inside diameter	
For the first 15 feet	$30 per foot
16 through 25 feet	$36 per foot
26 feet or more	$41 per foot
Rock drilling beyond auger refusal is reimbursed at the above rates with an additional $15 per foot.	
These amounts may only be charged one (1) time per borehole.	
Sample collection is part of well installation. Direct push technology must be used when it is most appropriate to the site and cost effective. The diameter of the boring must be appropriate for the size of the well being installed.	
Blind drilling using a hollow stem auger when well borings have already been logged within five (5) feet.	
4.25 inch inside diameter	
For the first 50 feet	$10 per foot
51 feet or more	$12 per foot
6.25 inch inside diameter	
For the first 50 feet	$13 per foot
51 feet or more	$15 per foot
8.25 inch inside diameter	
For the first 50 feet	$15 per foot
51 feet or more	$18 per foot
Decontamination and equipment cleaning	$12 per each 5 feet of boring
Cutting holes in concrete or asphalt (12 inches in diameter)	$110 per hole
Materials	
Well casing and screen (including riser) filter pack, annular, and surface seal:	
< 2 inch well	Applicable boring rate plus materials
2 inch well	$9 per foot
4 inch well	$15 per foot
6 inch well	$27 per foot
Flush-grade well covers	$125 per cover
Laboratory services, including containers, packaging, and postage.	
Soil analysis methods	
TPH–8015 GRO	$50 per sample
TPH–8015 DRO	$50 per sample
TPH–8015 ERO	$50 per sample
TPH–418.1	$95 per sample
TRPH–HEM–1664/9071B	$60 per sample
VOC–8260	$130 per sample
SVOC–8270	$225 per sample
PAH–8270SIM	$130 per sample
PAH–8310	$150 per sample
PCB–8082	$110 per sample

Metals– 7 barium, cadmium, chromium, lead, mercury, nickel, zinc	$100 per sample
(Individual metals)	$10 per sample
BTEX/MTBE–8021	$60 per sample
BTEX/MTBE–8260	$80 per sample
Ignitability	$30 per sample
Fraction of organic carbon	$70 per sample
Water analysis methods	
TPH–8015 GRO	$50 per sample
TPH–8015 DRO	$50 per sample
TPH–8015 ERO	$50 per sample
TPH–8015 Methane	$80 per sample
TRPH–HEM–1664	$50 per sample
VOC–8260	$135 per sample
BTEX/MTBE–8021	$50 per sample
BTEX/MTBE–8260	$80 per sample
SVOC–8270	$225 per sample
PAH–8270 SIM	$135 per sample
PAH–8310	$150 per sample
Metals– 7 barium, cadmium, chromium, lead, mercury, nickel, zinc	$100 per sample
(Individual metals)	$10 per sample
Metal–soluble iron	$25 per sample
Nitrates	$25 per sample
Sulfate	$25 per sample
Sulfide	$25 per sample
COD	$20 per sample
BOD_5	$40 per sample
Total suspended solids	$20 per sample
Air analysis methods	
VOC–TO–15	$400 per sample
Other Methods	
TCLP–lead	$100 per sample
If the commissioner requires all quality assurance/quality control (QA/QC), including raw data and internal chain of custody necessary to validate analytical results.	20% markup allowed per sample

PERSONNEL

When submitting a claim for reimbursement, the applicant is required to give the personnel classification, task being performed, and the name of the individual performing the task. Rates are paid based on the task performed by an employee rather than the qualifications of the employee. Refer to subsection (f) for task descriptions for personnel classifications. These labor rates are adjusted annually on June 1 of each year, in accordance with the product price index (PPI) percentage listed for December of the previous year. The North American Industry Classification System (NAICS) Code for Environmental Consulting Services is 541620 and is described at: https://www.naics.com/naics-code-description/?code=541620

The PPI Industry data tables are available through the Bureau of Labor and Statistics (BLS) at: https://www.bls.gov/ppi/home.htm	
Principal	$136 per hour
Senior project manager	$126 per hour
Project manager	$103 per hour
Staff project person	$87 per hour
Field/ELTF claims technician	$59 per hour
Drafting person	$50 per hour
Word processor/clerical	$35 per hour
Toxicologist	$155 per hour
INITIAL ABATEMENT AND FREE PRODUCT REMOVAL	
Except where provided in this rule, approval of costs is on a case-by-case basis.	
SITE SET-UP PREPARATION	
Trailer rental	$360 per month ($12 per day)
Portable toilet	$180 per month ($6 per day)
Utility check, the date and time of the utility check must be documented.	
Utility check includes air knifing, hand augering, and private utility location service.	$800
Utilities for temporary facilities	
Temporary power	$600 per month ($20 per day)
Temporary water	$180 per month ($6 per day)
Temporary phone	$240 per month ($8 per day)
DEMOLITION	
Three (3) bids must be submitted for demolition of structures in accordance with an approved CAP for reimbursement consideration as defined under CORRECTIVE ACTION TECHNOLOGIES.	
EXCAVATION	
Activities in accordance with an approved CAP are considered for reimbursement based upon the submittal of three (3) bids as defined under CORRECTIVE ACTION TECHNOLOGIES or the following unit rates:	
Equipment costs and labor	$2.70 per ton
Mobilization (includes vehicle mileage)	$400 per trailer
Stockpiling soil on-site	$1.65 per ton
Tank removal, decommissioning, cutting, and disposal are not eligible for reimbursement unless approved as part of corrective action.	
Under 1,000 gallons	$1,200 per tank
1,000 through 5,999 gallons	$1,800 per tank
6,000 through 10,000 gallons	$2,400 per tank
Above 10,000 gallons	$3,000 per tank
Costs for pumping, testing, and disposal of tank contents are not eligible for reimbursement.	
Three (3) bids must be submitted for demolition of structures in accordance with an approved CAP for reimbursement consideration as defined under CORRECTIVE ACTION TECHNOLOGIES.	

Mobilization (includes vehicle mileage)	$400 per trailer

Concrete and asphalt removal

Saw concrete, prices are per linear foot

	4 inch concrete	6 inch concrete
Under 200 feet	$1.60 per foot	$2.40 per foot
200 through 400 feet	$1.70 per foot	$2.20 per foot
400 through 600 feet	$1.60 per foot	$2.10 per foot
600 through 1,000 feet	$1.45 per foot	$2 per foot
Over 1,000 feet	$1.30 per foot	$1.80 per foot

Saw asphalt, prices are per linear foot

	3 inch asphalt	4 inch asphalt	6 inch asphalt
Under 450 feet	$2.20 per foot	$2.30 per foot	$3.60 per foot
450 through 600 feet	$1.80 per foot	$2.20 per foot	$2.50 per foot
600 through 1,000 feet	$1.60 per foot	$1.80 per foot	$2.20 per foot
Over 1,000 feet	$1.50 per foot	$1.60 per foot	$1.80 per foot

Hauling	$85 per hour per truck

The administrator shall approve hauling costs based on three (3) bids.

TRANSPORTATION

Activities in accordance with an approved CAP are considered for reimbursement based upon the submittal of three (3) bids as defined under CORRECTIVE ACTION TECHNOLOGIES or the following unit rates:

Loading	$1.65 per ton
Mobilization (includes vehicle mileage)	$400 per trailer
Hauling mileage must be documented	$85 per hour per truck
For excavation, stockpiling, and loading of less than 300 tons in a single day.	$1,200 per day or the actual cost, whichever is less

DISPOSAL OF SOIL, GROUND WATER, AND TRASH

Landfill fees

Sampling required by landfill. Receipts and analytical results from local municipality must be included.

Sanitary sewer, if approved for disposal of treated ground water. Receipts must be included.

Contaminated or disposable equipment and decontamination fluids.

Landfill reimbursement must not exceed the least expensive combination of documented hauling costs and documented disposal costs at a permitted landfill. Applicant must submit a cost justification if the applicant does not use the nearest land disposal facility permitted and willing to accept the applicant's waste.

CORRECTIVE ACTION TECHNOLOGIES

The maximum costs for the work done for corrective action are allowed on the basis of the lowest of three (3) comparable, competitive bids for the work specified in the approved CAP. Bids for the work specified in the CAP must include bids for installation and labor; however, separate bids may be obtained for cost of installation and labor. Copies of the request for proposal (RFP) for implementation of CAP that was sent to each vendor must be submitted. Each RFP and bid submittal is required to show a line item breakdown of the tasks to be performed in order to verify that all tasks are eligible for reimbursement. The administrator may approve costs based on less than three (3) bids if a demonstration is provided to the administrator that lower costs for the specified work is not possible or practical.

Lease or rental on equipment must not be reimbursed above the purchase price.

SITE RESTORATION

Activities in accordance with an approved CAP are considered for reimbursement based upon the submittal of three (3) bids as defined under CORRECTIVE ACTION TECHNOLOGIES or the following unit rates:

Backfill hauling	$85 per hour per truck
Backfill material	$18 per ton of stone $9 per ton of soil
Backfill placement, compaction, and density verification	$6 per ton
Resurfacing	
4 inch concrete	$5 per square foot
For each additional inch of concrete	Add $0.75 per square foot
For rebar	Add 15%
Asphalt pad, 4 inch thickness	$2.75 per square foot
Asphalt curb and gutter	$6 per linear foot
Island forms	
4 feet by 10 feet with 2 foot bumpers	$900 each
4 feet by 16 feet with 2 foot bumpers	$1,400 each
Equipment rental (based on daily rate; not an inclusive list)	
Decontamination equipment (bucket, brushes, and detergent)	$15
Power auger	$60
Hand auger sampling kit (hand auger/brass sleeves)	$42
Slide hammer core sampler	$42
Photoionization detector	$90
Flame ionization detector	$135
LED/O2 meter	$60
pH and conductivity meter	$24
Dissolved oxygen meter	$36
Oxidation/reduction meter (REDOX)	$50
Multiparameter water quality meter including pH, dissolved oxygen, temperature, and conductivity	$60
Ferrous iron field test	$8 per sample

Hydrogen sulfite field test	$8 per sample
Geographic positioning system (GPS) unit for site mapping to 1 foot accuracy	$120
2 inch submersible pump	$140
4 inch submersible pump	$115
Steam cleaner/pressure washer	$90
Water level indicator	$15
Oil/water interface probe	$70
Bailer rental	$20
Anemometer	$42
Carbon dioxide meter	$30
Portable generator, generator ≤ 5kW	$60
Portable generator, generator ≤ 10kW	$120
Portable generator, generator > 10kW	$150

(f) The following categories describe the personnel classification activity descriptions:

(1) The principal shall do the following:

(A) Serve as technical expert on sites.

(B) Limited site visits on projects.

(C) Coordinate legal matters with attorneys.

(2) The senior project manager (limited to licensed professional geologist or hydrogeologist (LPG), registered professional engineer (PE), certified hazardous materials manager (CHMM), professional soil scientist, or at least five (5) years professional remediation experience) shall provide the following:

(A) Project planning/oversight.

(B) Final review of project documents.

(C) Acquisition of and negotiation with subcontractors.

(D) Hydrogeologic and contaminant modeling.

(E) Remediation system design.

(F) Risk integrated system of closure (RISC) evaluation.

(3) The project manager shall provide the following:

(A) Technical document preparation required by 329 IAC 9 (CAP, ISC, FSI, pilot study, etc.).

(B) Site work preparation and planning.

(C) Supervision of investigation and remediation activities.

(D) Oversight of waste characterization, transportation, and disposal.

(E) Statistics and equations required by the department for corrective action in accordance with applicable guidance.

(F) Coordination of subcontractor work (drillers, plumbers, and electricians).

(G) Coordination of heavy equipment mobilization.

(H) Coordination with the department and the client.

(I) Site access/permitting.

(4) The staff project person shall do the following:

(A) Implement remediation system installation, operation, and maintenance.

(B) Conduct site mapping.

(C) Oversee installation of soil borings and monitoring wells.

(D) Provide on-site supervision or perform site characterization and remediation activities, or both.

(E) Oversee well water records searches.

(F) Request, oversee, or identify and mark utility location on the site.

(G) Survey wells.

(H) Oversee free product removal.

(I) Oversee quarterly sampling.

(5) The field/ELTF claims technician shall perform the following:
(A) Well purging and development.
(B) Sample collection, preparation, and delivery.
(C) Decontamination/site cleanup tasks.
(D) Assist with waste characterization, transportation, and disposal, including drum labeling/disposal.
(E) Activities associated with the operation and maintenance of remediation systems.
(F) Activities associated with preparation and submittal of the ELTF claim.
(6) The drafting person shall do the following:
(A) Provide computer-aided design drafting work.
(B) Generate the following:
(i) Drawings.
(ii) Maps and plans.
(iii) Boring logs.
(iv) Monitoring well installation logs.
(C) Revise drawings and maps and plans.
(7) The word processor/clerical person shall provide the following:
(A) Word processing/data input.
(B) General clerical duties.
(C) Documentation reproduction, report binding, and filing.
(D) Proofreading/editing.
(8) The toxicologist shall provide guidance for risk-based closures utilizing toxicological parameters.
(g) Attorney costs are considered for reimbursement as follows:
(1) Attorney costs are reimbursed under the following circumstances:
(A) An attorney acting as a principal, senior project manager, or project manager on a site directing field investigations or preparing the technical reports related to investigative or remediation activities. In this instance, the attorney must have the appropriate technical credentials required for an individual performing these tasks, such as PE, LPG, CHMM, or soil scientist.
(B) An attorney communicating to the department regarding remediation actions, preparing restrictive covenants, or access negotiations.
(C) Fees charged that do not exceed one thousand dollars ($1,000) for either environmental restrictive covenant preparation or access negotiation.
(2) An attorney may not be reimbursed for the following:
(A) Reviewing consultant reports.
(B) Charging fees in excess of the principal, senior project manager, or project manager as defined in this rule for the same personnel activities. Fees charged must also appropriately correspond to tasks performed.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-5; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1054; filed Nov 1, 1995, 8:30 a.m.: 19 IR 343; filed Jan 9, 1997, 4:00 p.m.: 20 IR 1105; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 792; errata filed Feb 27, 2002, 9:58 a.m.: 25 IR 2255; filed Aug 30, 2004, 9:40 a.m.: 28 IR 129; readopted filed Nov 19, 2010, 9:08 a.m.: 20101215-IR-328100553BFA; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA; readopted filed Jun 29, 2017, 9:30 a.m.: 20170726-IR-328170227BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA; errata filed Jul 31, 2018, 9:26 a.m.: 20180822-IR-328150231ACA)

328 IAC 1-3-6 Limitation of liability

Authority: IC 13-23-11-7
Affected: IC 13-23

Sec. 6. The application for or receipt of payment for reimbursable costs does not limit the legal responsibility of persons listed in section 1 of this rule for damages incurred by another person as a result of a release. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-3-6; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534;*

filed Oct 17, 2001, 4:30 p.m.: 25 IR 798; filed Aug 30, 2004, 9:40 a.m.: 28 IR 137; readopted filed Nov 19, 2010, 9:08 a.m.: 20101215-IR-328100553BFA; readopted filed Jun 6, 2016, 11:51 a.m.: 20160706-IR-328160142BFA)

Rule 4. Prioritization of Claims

328 IAC 1-4-1 General procedure for prioritization

Authority: IC 13-23
Affected: IC 6-6-1.1-103; IC 13-12-3-2; IC 13-23-9-4

Sec. 1. (a) The procedures in this section apply in the event the unencumbered balance, less the unpaid, approved claims for reimbursable costs and ELTF indemnity claims, in the fund falls below the following:

(1) Twenty-five million dollars ($25,000,000).

(2) Five million dollars ($5,000,000), with the prioritized claims, based on the categorized releases, paid in accordance with section 4 of this rule.

The administrator may invoke this section prior to the unencumbered fund balance, less the unpaid, approved claims for reimbursable costs and ELTF indemnity claims, falling below the amounts specified in subdivision (1) or (2).

(b) All claims or parts of claims submitted to the administrator for an emergency measure are paid first. If the claim or part of the claim is for work performed that has not been determined to be an emergency measure, the claim or part of the claim for that work is paid:

(1) according to the category of the eligible release as determined in subsection (c); and

(2) after the payment of all claims or parts of claims for emergency measures.

(c) After the initial site characterization, further site investigation, or a corrective action progress report is completed, the eligible release is placed in the lowest numbered category for which it qualifies as follows, and all claims for reimbursement of costs and ELTF indemnity claims are paid in numerical order of the eligible release category subject to the release recategorization provisions under section 3 of this rule:

(1) An eligible release is considered a category 1 eligible release if the administrator determines, based on the most recent information submitted to the administrator, that at least one (1) of the following has occurred and is attributable to the eligible release:

(A) Petroleum or petroleum constituents that exceed ten percent (10%) lower explosive limit (LEL) are detected in a structure or a utility conduit, such as a:

(i) storm sewer;

(ii) sanitary sewer; or

(iii) utility conduit.

(B) Vapors for petroleum or petroleum constituents are detected in a building at levels greater than the appropriate screening levels as specified by the department in accordance with the remediation standards determined under IC 13-12-3-2 for contaminants of concern.

(C) Petroleum or petroleum constituents are detected in a drinking water well at or above the appropriate screening levels for ground water as specified by the department in accordance with the remediation standards determined under IC 13-12-3-2 at the point of compliance or at the tap.

(2) An eligible release is considered a category 2 eligible release if the administrator determines, based on the most recent information submitted to the administrator, that at least one (1) of the following has occurred and is attributable to the eligible release:

(A) Petroleum or petroleum constituents are detected in free phase in a thickness of at least one (1) foot in any one (1) well, or at least one (1) inch in two (2) or more wells where the wells are at least twenty (20) feet apart, provided that the wells are not screened in the underground storage tank cavity backfill.

(B) Petroleum or petroleum constituents are detected in surface water above water quality standards under 327 IAC 2.

(3) An eligible release is considered a category 3 eligible release if the administrator determines, based on the most recent information submitted to the administrator, that at least one (1) of the following has occurred and is attributable to the

eligible release:

(A) Petroleum or petroleum constituents are detected off-site in ground water at concentrations exceeding the appropriate screening levels as specified by the department in accordance with the remediation standards determined under IC 13-12-3-2 for the land use of the off-site location.

(B) Petroleum or petroleum constituents are detected off-site in soil at concentrations exceeding the appropriate screening levels as specified by the department in accordance with the remediation standards determined under IC 13-12-3-2 for the land use of the off-site location.

(C) Petroleum or petroleum constituents are present in free phase in a thickness of at least one-sixteenth (1/16) inch in any well.

(D) Petroleum or petroleum constituents, attributable to a gasoline release, are detected in the ground water at concentrations exceeding the appropriate screening levels as specified by the department in accordance with the remediation standards determined under IC 13-12-3-2 for the land use. For the purposes of this clause, gasoline has the meaning set forth in IC 6-6-1.1-103(g).

(4) An eligible release is considered a category 4 eligible release if the administrator determines, based on the most recent information submitted to the administrator, that at least one (1) of the following has occurred and is attributable to the eligible release:

(A) Petroleum or petroleum constituents are detected in on-site ground water at concentrations exceeding the appropriate screening levels as specified by the department in accordance with the remediation standards determined under IC 13-12-3-2, in two (2) or more wells, where the wells are at least twenty (20) feet apart, where neither well is screened in the underground storage tank cavity backfill.

(B) Petroleum or petroleum constituents are detected in on-site soil at concentrations exceeding the appropriate screening levels as specified by the department in accordance with the remediation standards determined under IC 13-12-3-2, in at least two (2) boring holes at least twenty (20) feet apart.

(5) An eligible release that does not qualify as a category 1, 2, 3, or 4 eligible release is considered a category 5 eligible release.

(6) Claims in the same category are paid in chronological order according to the date and time received by the administrator as indicated by the date and time stamped by the administrator on the claim submitted to the administrator.

(d) Eligible releases must be initially categorized according to those conditions that existed at the time the first claim was submitted after prioritization was initiated.

(e) Claims determined to not be reimbursable may be revised and resubmitted to the fund. The date and time of the revised claim for the purposes of subsection (c)(6) must be based on the date and time that the fund administrator receives the revised claim as indicated by the date and time stamped by the administrator on the claim submitted to the administrator.

(f) An applicant may request a review of a denial of payment using the procedures set forth in IC 13-23-9-4.

(g) Categorization of an eligible release or placement of a claim on a priority list does not constitute a commitment to reimburse corrective action or ELTF indemnity claim costs. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055; filed Nov 1, 1995, 8:30 a.m.: 19 IR 347; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 799; filed Aug 30, 2004, 9:40 a.m.: 28 IR 137; errata filed Oct 7, 2004, 11:45 a.m.: 28 IR 608; readopted filed Nov 19, 2010, 9:08 a.m.: 20101215-IR-328100553BFA; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA; readopted filed Jun 29, 2017, 9:30 a.m.: 20170726-IR-328170227BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-4-1.5 Transition to the prioritization procedure under this rule (Repealed)

Sec. 1.5. *(Repealed by Underground Storage Tank Financial Assurance Board; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA)*

328 IAC 1-4-2 Creation of the initial priority list (Repealed)

Sec. 2. *(Repealed by Underground Storage Tank Financial Assurance Board; filed Nov 1, 1995, 8:30 a.m.: 19 IR 350)*

328 IAC 1-4-3 Recategorization of eligible releases

Authority: IC 13-23
Affected: IC 13-23-9-2; IC 13-23-9-4

Sec. 3. (a) To ensure the efficient administration of the fund, the administrator may recategorize an eligible release at any time that it is determined an eligible release has been incorrectly categorized as follows:

(1) The administrator shall notify the applicant by mail of the new category.

(2) The applicant may petition the administrator to be put in a lower number category, with category 1 being the lowest, based on new information.

(3) If the administrator approves placement in a lower number category, the applicant may seek reimbursement under the new category for any costs incurred subsequent to the placement in the new category.

(4) If the administrator approves placement in a higher number category with category 5 being the highest category, the applicant has fifteen (15) days after the date of the notification to submit current costs under the new category.

(b) Eligible releases may be recategorized based on:

(1) the current environmental conditions;

(2) information indicating the elimination or abatement of the condition or conditions that led to the placement of an eligible release in a category;

(3) the discovery of the event that led to the placement in a lower category with category 1 being the lowest; or

(4) other information available to the administrator demonstrates that recategorization is appropriate.

(c) Except as provided in subsection (a), the priority of a claim is determined by the category of the eligible release at the time the claim is approved by the administrator and by section 1(c)(6) of this rule. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-3; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1055; filed May 25, 1999, 4:31 p.m.: 22 IR 3103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Aug 30, 2004, 9:40 a.m.: 28 IR 141; errata filed Oct 7, 2004, 11:45 a.m.: 28 IR 608; readopted filed Nov 19, 2010, 9:08 a.m.: 20101215-IR-328100553BFA; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA; readopted filed Jun 29, 2017, 9:30 a.m.: 20170726-IR-328170227BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-4-4 Monthly reimbursement

Authority: IC 13-23
Affected: IC 13-23-7-2; IC 13-23-9-2; IC 13-23-9-4

Sec. 4. (a) After priority payment under section 1(a)(2) of this rule is initiated, the total amount reimbursed from the fund in any calendar month must not exceed the fund revenue of the previous month, less the administrative expenses of the fund. The administrator must adjust the total amount reimbursed from the fund in any calendar month as necessary to maintain a fund balance of at least five million dollars ($5,000,000).

(b) For purposes of this section, "fund revenue" means any or all sources of money as described in IC 13-23-7-2. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-4; filed Aug 30, 2004, 9:40 a.m.: 28 IR 141; errata filed Oct 7, 2004, 11:45 a.m.: 28 IR 608; readopted filed Nov 19, 2010, 9:08 a.m.: 20101215-IR-328100553BFA; readopted filed Jun 6, 2016, 11:51 a.m.: 20160706-IR-328160142BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-4-5 Discontinuation of prioritization

Authority: IC 13-23
Affected: IC 13-23-9-4

Sec. 5. (a) At any time after the administrator has invoked prioritization procedures, the administrator may discontinue the categorization of eligible releases and the prioritization of claims if the administrator determines that the unencumbered balance, less the unpaid, approved claims for reimbursable costs and ELTF indemnity claims is greater than twenty-five million dollars ($25,000,000).

(b) In the event that monies are deposited in or appropriated to the fund in an amount exceeding twenty-five million dollars

($25,000,000) in any calendar month, the administrator shall first apply the monies to restore the balance of the fund to an unencumbered balance, less the unpaid, approved claims for reimbursable costs and ELTF indemnity claims, of twenty-five million dollars ($25,000,000). In that event, the administrator shall discontinue the prioritization procedures. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-4-5; filed Aug 30, 2004, 9:40 a.m.: 28 IR 141; readopted filed Nov 19, 2010, 9:08 a.m.: 20101215-IR-328100553BFA; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA; readopted filed Jun 29, 2017, 9:30 a.m.: 20170726-IR-328170227BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

Rule 5. Claims

328 IAC 1-5-1 Applications for payment of reimbursable costs

Authority: IC 13-23
Affected: IC 13-23

Sec. 1. (a) Claim applications for reimbursement must be submitted on forms approved by the administrator. Applicants shall itemize all reimbursable costs as required by the application package. Documentation of reimbursable costs as required by the administrator must be submitted as part of the application. The administrator may request additional information and records to substantiate claims submitted including the following:

(1) A copy of original employee time sheets.

(2) Invoices relating to purchase or other acquisition of equipment and supplies used for corrective action.

(3) Copies of requests for bids for work specified in the CAP.

(b) The application must contain the following statement, which must be signed and attested by the person applying to the fund: "I swear or affirm to the best of my knowledge and belief that the costs presented herein represent the reimbursable costs actually incurred in the performance of site characterization or corrective action related to this site during the period of time indicated on this application. I also swear or affirm that all charges presented as part of this application were necessary to the performance of site characterization or corrective action.". If the person applying has been assigned the right to reimbursement under this rule, the person who assigned that right shall also sign and attest the application.

(c) One (1) copy of all documents required by the administrator must be submitted by the person applying to the fund to support the application. Original documents must be kept by the person applying to the fund for a minimum of four (4) years after the date the application for payment was submitted or four (4) years after completion of corrective action, whichever is later.

(d) Claims, other than final claims, that had costs disallowed, if resubmitted, must be resubmitted with subsequent claims. The portion of the claim that was previously submitted must be identified as being previously submitted and include the dollar value of the original claim. The same disallowed cost may only be submitted to the department for consideration three (3) times, including the initial claim submittal.

(e) A single claim application may not be submitted to the fund for reimbursement in an amount less than five thousand dollars ($5,000) unless the claim is one (1) of the following:

(1) The final application for that incident and the claim is identified as such.

(2) A claim for costs incurred over one hundred eighty (180) days from the date of the previous claim.

(3) A claim made within fifteen (15) days of an eligible release being categorized to a lower category, with one (1) being the highest category, under 328 IAC 1-4.

(4) Eligibility preapproval claims requesting zero dollars ($0).

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-5-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1056; filed Nov 1, 1995, 8:30 a.m.: 19 IR 349; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 801; filed Aug 30, 2004, 9:40 a.m.: 28 IR 142; readopted filed Nov 19, 2010, 9:08 a.m.: 20101215-IR-328100553BFA; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA; readopted filed Jun 29, 2017, 9:30 a.m.: 20170726-IR-328170227BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)

328 IAC 1-5-2 Fund payment procedures

Authority: IC 13-23
Affected: IC 13-23-8; IC 13-23-9

Sec. 2. (a) Contingent on the availability of monies as determined by 328 IAC 1-2-3, the administrator shall authorize payment upon determining that the requirements of IC 13-23-8, IC 13-23-9, and this article have been met. Payment is made as follows:

(1) When a person applying to the fund submits an application under section 1 of this rule that includes reimbursable costs for which that person has not made payment, then payment must be made jointly to the person applying to the fund and the contractor involved using a payment method accepted by the department.

(2) When a person applying to the fund submits documentation verifying that the person has incurred reimbursable costs, payment must be made directly to that person using a payment method accepted by the department.

(b) A determination under this rule is appealable under IC 13-23-9-4.

(c) Only an eligible party may seek preapproval of eligibility to have reimbursable costs or ELTF indemnity claims paid from the fund. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-5-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1056; filed May 25, 1999, 4:31 p.m.: 22 IR 3103; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 801; filed Aug 30, 2004, 9:40 a.m.: 28 IR 142; readopted filed Nov 19, 2010, 9:08 a.m.: 20101215-IR-328100553BFA; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA; readopted filed Jun 29, 2017, 9:30 a.m.: 20170726-IR-328170227BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-5-3 Deemed approved; reimbursement of costs (Repealed)

Sec. 3. *(Repealed by Underground Storage Tank Financial Assurance Board; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

Rule 6. ELTF Indemnity Claims

328 IAC 1-6-1 Applications for payment of ELTF indemnity claims

Authority: IC 13-23
Affected: IC 13-23-9-1.3; IC 13-23-9-3

Sec. 1. (a) Applications for reimbursement of ELTF indemnity claims against owners or operators must be submitted on approved forms established by the administrator. The applicant must attach either a certified copy of a legally enforceable final judgment against the owner or operator or a reasonable settlement between the owner or operator and the third party.

(b) The owner or operator must provide evidence of payment of costs incurred equal to the deductible and any additional amount under IC 13-23-9-1.3.

(c) When submitting an application to the administrator under subsection (a), the owner or operator must also forward a copy of the request to the attorney general.

(d) The minimum single claim amount contained in 328 IAC 1-5-1(e) does not apply to ELTF indemnity claims. *(Underground Storage Tank Financial Assurance Board; 328 IAC 1-6-1; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1057; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 802; filed Aug 30, 2004, 9:40 a.m.: 28 IR 143; readopted filed Nov 19, 2010, 9:08 a.m.: 20101215-IR-328100553BFA; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA; readopted filed Jun 29, 2017, 9:30 a.m.: 20170726-IR-328170227BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-6-2 Fund payment procedures for ELTF indemnity claims

Authority: IC 13-23
Affected: IC 13-11-2-193.5; IC 13-23-9-3

Sec. 2. (a) If the attorney general approves an ELTF indemnity claim in accordance with IC 13-23-9-3, the administrator shall pay the approved ELTF indemnity claim in accordance with this rule:

(1) if sufficient monies exist after other obligations have been met under 328 IAC 1-2-3;

(2) based upon the category of the eligible release and ranking of the claim under 328 IAC 1-4, if applicable; and

(3) if the administrator determines that the owner or operator is in compliance with the requirements of IC 13-23 and rules adopted thereunder.

(b) When an ELTF indemnity claim is approved by the attorney general but the claim has not already been paid by the owner or operator, then payment must be made jointly to the eligible owner or operator and the third party using a payment method accepted by the department.

(c) When an ELTF indemnity claim is approved by the attorney general and the owner or operator submits to the administrator documentation verifying that the owner or operator has paid the ELTF indemnity claim, payment must be made directly to the eligible owner or operator.

(d) ELTF indemnity claims subject to approval by the attorney general must include the reasonable fees or compensation paid for any of the following:

(1) Access to properties not controlled by the applicant, if not submitted as a reimbursable cost under 328 IAC 1-3-5.

(2) Institutional and engineered controls for off-site properties, including restrictive covenants as defined under IC 13-11-2-193.5.

(3) Attorney's fees, not to exceed twenty-five percent (25%) of the total claim or thirty thousand dollars ($30,000), whichever is less, are only payable if incurred by the owner or operator in defense of an ELTF indemnity claim.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-6-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1057; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 802; filed Aug 30, 2004, 9:40 a.m.: 28 IR 143; readopted filed Nov 19, 2010, 9:08 a.m.: 20101215-IR-328100553BFA; filed Feb 24, 2011, 2:04 p.m.: 20110323-IR-328080684FRA; readopted filed Jun 29, 2017, 9:30 a.m.: 20170726-IR-328170227BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)

328 IAC 1-6-3 Components of ELTF indemnity claims

Authority: IC 13-23
Affected: IC 13-23-9-3

Sec. 3. (a) An ELTF indemnity claim may consist of monetary damages a tank owner or operator is legally obligated to pay for injury, costs, and damage suffered by a third party as the result of a release, including bodily injury and property damage.

(b) An ELTF indemnity claim may not include the following:

(1) Punitive or exemplary damages.

(2) Claims for injury, costs, or damages arising on behalf or in favor of a person listed in 328 IAC 1-3-1.

(3) Costs that were previously determined ineligible for reimbursement.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-6-3; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)

Rule 7. Financial Assurance

328 IAC 1-7-1 Financial assurance certificate (Repealed)

Sec. 1. *(Repealed by Underground Storage Tank Financial Assurance Board; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)*

328 IAC 1-7-2 Termination of financial assurance

Authority: IC 13-23-11-7
Affected: IC 13-23

Sec. 2. (a) After consultation with the financial assurance board, the administrator may determine that the fund does not provide evidence of financial assurance for owners and operators.

(b) If a determination is made under subsection (a), the administrator shall notify all fund participants by certified mail.

(c) The fund coverage continues for sixty (60) days after the notice of insufficient funds to provide for financial assurance

is sent to the fund participants.

(d) Within thirty (30) days after receipt of the notice of insufficient funds, owners and operators shall:

(1) acquire financial assurance as required under 329 IAC 9; and

(2) provide proof of financial responsibility to the department.

(e) Invocation of prioritization under 328 IAC 1-4 does not constitute termination of financial assurance under this section.

(Underground Storage Tank Financial Assurance Board; 328 IAC 1-7-2; filed Dec 4, 1992, 11:00 a.m.: 16 IR 1057; readopted filed Jan 10, 2001, 3:21 p.m.: 24 IR 1534; filed Oct 17, 2001, 4:30 p.m.: 25 IR 803; filed Aug 30, 2004, 9:40 a.m.: 28 IR 144; readopted filed May 14, 2007, 1:52 p.m.: 20070523-IR-328070137BFA; readopted filed Jul 29, 2013, 9:18 a.m.: 20130828-IR-328130177BFA; filed Jul 27, 2018, 2:31 p.m.: 20180822-IR-328150231FRA)

328 IAC 1-7-3 Revocation of certificate by the department (Repealed)

Sec. 3. *(Repealed by Underground Storage Tank Financial Assurance Board; filed Aug 30, 2004, 9:40 a.m.: 28 IR 144)*

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